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Supreme Court, U.S.
FILED
NOV 24 1992
OFFICE OF THE CLERK

No. 92-735

In The

Supreme Court of the United States

October Term, 1992

IN THE MATTER OF THE ESTATE OF
MARIE ALMA GUMBRECK, DECEASED

JOHN A. BLASCHKE,

Petitioner,

versus

MARJORIE J. CAUSEY,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

JURISDICTIONAL ISSUES

The Respondent received a copy of the Petition for Writ of Certiorari that was finally filed on or about October 25, 1992, and this Brief in Opposition is timely filed as provided by Rule 15.2 of the Rules of the Supreme Court of the United States.

Respondent questions the filing of the Petitioner's Petition for Writ of Certiorari as to be timely filed since

the original Petition was returned to the Petitioner and it is not known if the Petition thereafter was timely filed.

STATEMENT OF THE CASE

At one time, Petitioner, Dr. John A. Blaschke, was the beneficiary under a Last Will and Testament prepared by Marie Alma Gumbreck. The Will apparently was executed in 1966 and had the Codicil added in 1976.

On or about January 1, 1989, Marie Alma Gumbreck moved to Ponca City, Oklahoma, and established a home with her longtime friends, Marjorie J. Causey and her husband, Edward L. Causey. Before coming to Ponca City, Mrs. Gumbreck had her lawyer in Oklahoma City draft a new Will. The lawyer in Oklahoma City sent the Will to C.D. Northcutt, Causey's attorney in Ponca City, Oklahoma, for review. After Mrs. Gumbreck moved to Ponca City, Oklahoma, C.D. Northcutt, attorney for Respondent, retyped the Will in order to have local witnesses and a local Notary Public for the self-proving Will. Under the new Will, the Causey's were the beneficiaries.

The Causey's looked after Mrs. Gumbreck and after coming to Ponca City, because of nutritional changes, her condition of eyesight and general health improved. She did die, however, on September 1, 1989, unexpectedly.

The Will was filed for Probate in due time and was admitted to Probate in the District Court of Kay County, Oklahoma, on October 16, 1989. Notices were mailed as provided by law to the known heirs and beneficiaries and

were published in the Ponca City News pursuant to Okla. Stat. Ann. tit. 58, O.S. 25 (West Supp. 1992).

No Notice was mailed to Dr. Blaschke.

Dr. Blaschke was notified of the funeral arrangements at the time of death but was going to the lake that weekend and did not attend the funeral. He knew about the death because of a telephone call from Marjorie Causey.

On or about December 15, 1989, Dr. Blaschke requested his attorney to check on the decedent's estate and shortly thereafter, Blaschke's attorney discovered that the Court had admitted the Gumbreck Will to Probate.

On or about February 5, 1990. Blaschke filed a Petition in the District Court of Kay County contesting the validity of the Will.

ARGUMENT

IF NO PERSON, WITHIN THREE (3) MONTHS AFTER THE ADMISSION TO PROBATE OF A WILL, CONTESTS THE SAME OR THE VALIDITY THEREOF, THE PROBATE OF THE WILL IS CONCLUSIVE, SAVING TO INFANTS AND PERSONS OF UNSOUND MIND, A PERIOD OF ONE (1) YEAR AFTER THEIR RESPECTIVE DISABILITIES ARE REMOVED. Okla. Stat. Ann. tit. 58, O.S. § 67 (West Supp. 1992)

The original contest period in Oklahoma was one year after the Will was admitted to Probate. An amendment in 1953 shortened the contest period to six (6)

months and the last amendment, in 1967, shortened the period to three (3) months.

The Gumbreck Will was admitted to Probate October 16, 1989. The limitation for filing a contest to the Will expired on January 16, 1990. Under Okla. Stat. Ann. tit. 58, O.S. § 67 (West Supp. 1992) above mentioned, the Order Admitting the Will to Probate became conclusive on January 16, 1990, and not subject to contest.

WILLS – CONTEST – LIMITATION OF ACTIONS – EFFECT OF PROBATE

In re Maxwell's Estate, Sup. Crt. Calif., December 23, 1887:

> Code of Civil Procedure, California, paragraph 1333, limits the time for contesting a will to one year after its probate held that after that time it is conclusive as against an application to declare a devise void for fraud practiced upon the testator.

A late case in Oklahoma is *In the Matter of the Estate of Dora E. Hunt Redwine,* 445 P.2d 275:

> Held that a contest of original will was barred by the six month statute of limitation respecting contest of will admitted to probate. (September 10, 1968)

The above case also held that equity cannot be invoked because there is no equitable power to change rights defined and established by law or to create right where none exists. Another case, *Mayweather v. Wallace,* 159 P.2d 529, held:

> A probate court may vacate order and remove probate only within specified period from its rendition and statutory limitation on time within which a person may apply for vacation of probate order.

The above case also held that a person would have to have standing to contest the Will. This construes the statute regarding contest only by an interested party. Any party who contests within the time period must demonstrate that he or she is an interested party or there will be no standing in court. No party, interested or otherwise, can contest after the contest period unless under disability by reason of unsound mind or an infant.

Another case, *Red Eagle v. Cannon*, 177 P.2d 841, held:

> Statute making the probate of a will conclusive, if not attacked within one year after probate, is intended to make the vested interest of devisees and legatees secure after a reasonable time. (1946)

With regard to fraud, there is a case *In re Turinsky's Estate*, 103 P.2d 86 (1940), which held:

> The statute providing that when a will has been admitted to probate, any person interested in the estate may within one year after such probate, contest the probate or validity of will, and statute providing that if no person within one year after probate contests the probate or validity of the will, probate is conclusive, except as to infants and persons of unsound mind, are applicable to an action to contest the probate of a will on ground of fraud, rather than statutes providing that an action for relief on ground of fraud may be brought within two years, and

> that a cause of action shall not be deemed to have accrued until discovery of the fraud.

Reeder v. Reeder, 14 P.2d 684 (1932), held that a will cannot be contested after expiration of one year from time it was regularly admitted to probate. Then it also held:

> Equity will not entertain jurisdiction of a bill to set aside will or probate thereof.

The case went ahead to say:

> Where will was regularly admitted to probate, estate closed and limitation had run against contesting will, dissatisfied heirs cannot proceed in district court to set aside will and probate thereof.

Dr. Blaschke failed to file his contest within the time allowed by law and, of course, is completely barred under Oklahoma law from any further proceedings. The lower court so held, the Court of Civil Appeals so held and the Oklahoma Supreme Court denied certiorari.

Dr. Blaschke asserts that he was an interested party and therefore was entitled to Notice. This is a moot question since he admits that he had Notice on or about December 15, 1989, when he asked his attorney to investigate the status of the Estate and his attorney found that the Will had been admitted to Probate.

Respondent denies that Dr. Blaschke was an interested party but was only a disappointed former beneficiary. He was not entitled to any notice under the law. However, that question is moot since he definitely acknowledges that he did know of this proceeding on

December 15, 1989 and he failed, within the statutory time, to file his contest.

Petitioner argues that venue was improper in Kay County. The lower courts found and our appeals courts found that the venue was in Kay County, Oklahoma, since the decedent had moved to Kay County, had sold her home in Oklahoma City, had no voting rights and no residence in Oklahoma City at the time.

The argument that the Will was executed under duress and undue influence failed for two reasons: (1) It is not a proper argument to put before the Court by reason of a presumption arrived at by the Appellant, and (2) It fails also because it could have been raised by timely contest and since there was no timely contest the proposition fails.

CONCLUSION

The three months limitation against contest after Will has been admitted to Probate has been in effect in Oklahoma since 1967. The statutes, both Okla. Stat. Ann. tit. 58, O.S. § 61 and 58 O.S. § 67 (West Supp. 1992) are conclusive, clear and cannot be overturned by reason of equity or fraud (if there had been fraud or if equity existed and neither does).

Respectfully submitted,

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